



THE SUPREME COURT
HISTORICAL SOCIETY

Quarterly

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Bicentennial of Constitution is Worldwide Celebration

The American Constitution is an international document. It has inspired countries around the world in writing and rewriting their own fundamental laws. During the Bicentennial of the U.S. Constitution period, the United States Information Agency (USIA) has launched an impressive program to share America's constitutional heritage with supreme courts, ministries of justice, law schools, and bar associations around the world.

Under the direction of senior foreign service officer Frederick Quinn, USIA's Office of the Bicentennial of the U.S. Constitution has organized exhibits, lectures and activities in many countries throughout the world. In discussing USIA's activities, Dr. Quinn said the objective of the commemoration has been to make the projects substantive, rather than simply nostalgic. As a result of political and economic upheaval throughout much of the world, many countries are reexamining their fundamental governmental concepts, which include their legal systems. Emphasizing the fact that this is a period of transition for many countries, Dr. Quinn said that "most of the world's 220 countries have written constitutions, sixty percent of them written since 1970. Only fourteen antedate World War II." These statistics underscore why the Constitution of the United States of America, with its two hundred year history, has become a model for serious study by constitutional scholars throughout the world.

One of the primary projects of the USIA Bicentennial Office has been the publication and distribution of the text of the Constitution. This has been published in an illustrated and annotated sixty-page pamphlet, printed in English, Spanish, French and Arabic. The Agency has also published copies in Korean, Japanese, Dutch, Turkish, Indonesian, Finnish and Nepalese. Dr. Quinn pointed out that the Constitution had been translated by the USIA and other organizations, including commercial publishers, into another twenty languages, including Russian and Chinese, thus making it available to millions of people. Since 1956, the USIA has also sponsored the translation of "The Federalist Papers" into eleven languages.

Another focal point of the USIA's Bicentennial programs is a fifty-panel poster exhibit entitled "We the People".

This exhibit traces aspects of the development of the Constitution, including such major landmarks as the Magna Carta and the Mayflower Compact, as well as outlining the fundamental principles incorporated in the document. The exhibits are printed in Manila, P.I., in English, Arabic, French and Spanish and circulated throughout the world to U.S. embassies. A pamphlet distributed to visitors to the exhibit contains a time-line tracing the events culminating in the ratification of the Constitution.

The Supreme Court Historical Society assisted the USIA by making the formal group photograph of the Justices of the Supreme Court of the United States available for distribution to American embassies throughout the world. The photograph was furnished to embassies in slide, print and transparency formats making it possible to use the picture in slide shows, publications and displays. The Society has also donated 2,000 copies of its thirty-two-page informational brochure about the Supreme Court of the United States and its work. These were then distributed to U.S. Embassies throughout the world to be used in their activities.

Perhaps the most ambitious aspect of the international celebration of the Constitution has been the speakers program. This program has enabled many U.S. constitutional experts to lecture and teach about the creation and implementation of the

-continued on page eight

Annual Meeting Date Set

The date for the Society's fourteenth Annual Meeting has been set for Monday, May 15, 1989. As in past years, the day's activities will include the annual lecture, a tour of the Supreme Court Building, and an open house at the Society's headquarters. The evening's activities will include the annual meeting of the membership, followed by a black tie reception and dinner at the Supreme Court. The Annual Lecture will be given by Associate Justice Anthony M. Kennedy in the Supreme Court Chamber. Further details will follow in the next issue of the *Quarterly* and each member will receive a separate invitation and reservation card for reservations to the reception and dinner. Invitations will be delivered to all members by April tenth.

A Letter from the President

Once again this letter to you will be confined largely to a report on our committee activities. In the next issue of the *Quarterly* I will talk to you primarily about our fund-raising efforts and where we stand. First, the committees and their work:

Acquisitions Committee

The Acquisitions Committee, chaired by Mrs. Patricia Collins Dwinell, held its last meeting on November 14, 1988, at which time it welcomed its newest member, Mr. Howard Goldman. Pursuant to discussions at the last Executive Committee meeting, the Acquisitions Committee is assuming responsibilities beyond its traditional role of screening items being considered for the Society's collection of antiques and artifacts. The new duties include the development and implementation of a systematic and coherent acquisitions program. At its last meeting, the Committee reviewed proposals for raising the considerable funds which an ambitious acquisitions program might require.

Annual Meeting Committee

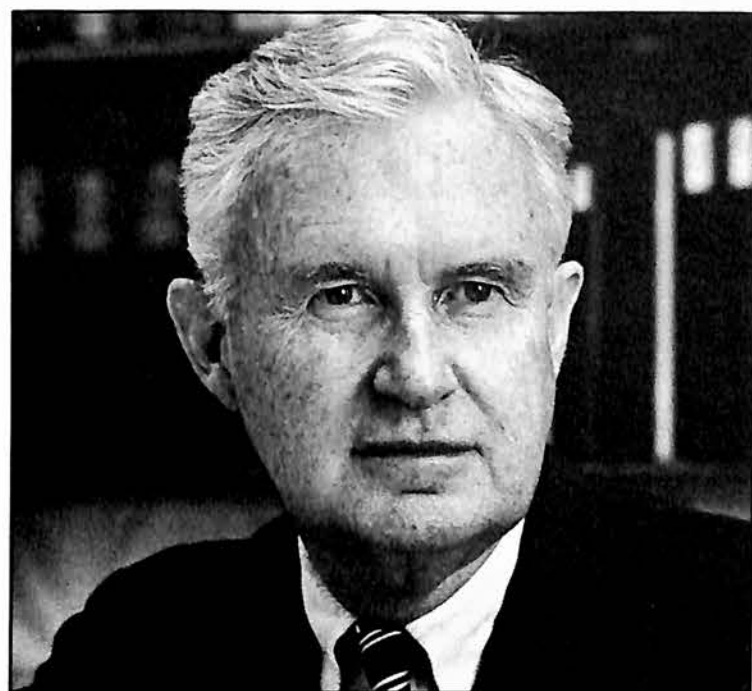
Chief Judge Howard Markey, who also served as last year's Annual Meeting Chairman, has graciously agreed to attempt a repeat performance of that very successful effort. Judge Markey's appointment to this post brings with it his considerable experience as well as a frugal administration since the Chief Judge will likely serve without appointing additional members to his Committee. Among the events already arranged, the Society is proud to have Associate Justice Anthony Kennedy as this year's annual speaker. The Annual Meeting will be held on Monday, May 15th and invitations will be delivered to members by April tenth.

Facilities Committee

The ad hoc Facilities Committee, chaired by Frank Gilbert, held its first meeting on November 10, 1988. The Committee was empowered by the Executive Committee to oversee the Society's headquarters building and its gift shop in the Supreme Court Building. The Executive Committee will propose an amendment to the Society's By-laws at the Annual Meeting next May to establish this committee on a permanent basis.

At its first meeting the Facilities Committee focused its attention primarily upon the status of the Society's headquarters building. The Committee assessed what repairs the building would require in the months ahead. The Committee also discussed what changes or additions might be made to the structure to better improve the building's utility to the Society and to facilitate the work of the Society's staff. Finally, the Committee determined the need to establish an annual budget for the Society's headquarters which would anticipate maintenance and replacement costs.

The Committee also discussed the progress being made on relocating and improving the displays in the Society's gift shop in the Supreme Court Building. The project, which the Court and the Executive Committee approved earlier this year, is expected to be completed within the next few weeks. It will provide the Society with expanded and improved display space



Society President Justin A. Stanley

which will better serve the needs of those touring the Court.

Membership Committee

George Bush and Frank Jones will have something in common during the next month or two as each undertakes to appoint qualified and motivated individuals to fill vacant posts within their respective administrations. Mr. Jones succeeded John Shepherd as Chairman of the Membership Committee on January 1st and will be devoting much of his time toward reorganizing the Society's State Membership Chairmen's network.

The State Membership Chairmen are responsible for conducting a person-to-person membership campaign within their respective states, which has accounted for a major proportion of the Society's growth in the past few years. The Committee has established a goal of 4,000 members. The Society's current membership numbers approximately 2,500.

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Managing Editor Kathleen Shurtleff

Nominating Committee

The Nominating Committee will meet in February to determine whom it will recommend for nomination as Officers and Trustees of the Society at the Society's next Annual Meeting. The Annual Meeting is scheduled for May 15, 1989 in the Supreme Court Building in Washington and all members are urged to attend. Suggestions for nominees should be directed to Nominating Committee Chairwoman Virginia Warren Daly at the Society's headquarters.

Program Committee

Program Committee Chairman J. Roderick Heller, III delivered a report at the Executive Committee meeting on October 19, 1988 proposing funding for a list of one-time and recurring projects which it recommended that the Society undertake. The Program Committee worked closely with Society Treasurer, Peter Knowles, and the Budget and Finance Committee to establish a budget for new program expenditures of between \$36,000 and \$50,000. This budget proposal was approved.

Mr. Heller consulted with other committees, Trustees, Court personnel, and staff members seeking suggestions for new program activities. The resulting report to the Executive Committee included a statement of principle endorsing expanded program activities and a list of six specific projects for which funding was sought. The Executive Committee approved immediate funding for three of the proposals and approved the other three proposals in principle pending studies on their scope and feasibility. The six programs are listed below:

A triennial prize of \$5,000 was established to be awarded to the author(s) of the best book published on Supreme Court history during the judging period. The Committee is preparing eligibility requirements and judging criteria for submissions which it hopes to announce in early February through notices in various professional journals.

The Documentary History Project was voted \$10,000 for the purchase of computer equipment. This equipment is expected to facilitate preparation of the subject indices on some of the volumes now being prepared for publication.

Annual prizes of up to \$1,500 were approved which will be awarded to the authors of outstanding original contributions to the *Yearbook*. This program is discussed in more detail in the report of the Publications Committee which will supervise the awards.

The Publications Committee is to conduct a feasibility study on the development of a collection of illustrated biographies of the Justices. The Executive Committee approved this project in principle while seeking estimates on time and expenses likely to be associated with completing the project before making a final commitment.

Development of a research guide to the sources of papers and documents pertaining to the Justices and the Court's history was approved in principle. This project could vary widely in scope,

and the Executive Committee has asked the Program Committee to define more clearly its parameters, as well as the potential investments of time and funds which may be required before proceeding further.

The Program Committee called for development of a cooperative effort to prepare what will probably be a subject catalog of the Court Curator's extensive photograph and print collections to aid authors and publishers when illustrating works on the Court's history. Further discussions with the Court Curator will be required before a formal budget is submitted for this project.

Publications Committee

The Publications Committee, chaired by Kenneth S. Geller, is currently working on two items: increasing the quality of the *Yearbook* and publishing it on a timely schedule; and, conducting a feasibility study for developing a published collection of illustrated biographies of the Justices.

Appointment of Professor Michael Cardozo was one of the significant changes the Publications Committee took to facilitate its efforts with respect to the *Yearbook*. Professor Cardozo is coordinating the publication process between the *Yearbook's* Board of Editors and the Publications Committee. He is also leading efforts to acquire more quality articles for the *Yearbook*. The Executive Committee voted in October to aid this latter effort by budgeting funds for annual cash awards for the best two articles to be published in the *Yearbook*. Commencing with the 1989 edition, the Board of Editors will award first and second prizes of \$1,500 and \$500 respectively to the authors of the two best original articles published in the *Yearbook*. The concept for these prizes was jointly developed by the Program Committee and the Publications Committee to promote scholarly interest in writing articles on the Court's history. Announcements of the awards are being sent to various law, history, and education-related journals. A deadline for submissions to be considered for the 1989 edition has been set at September 1, 1989.

The collection of illustrated biographies of the Justices is still in the planning stages, but is anticipated to be a two-volume, full-color publication totaling approximately 330 pages. The Committee is exploring the possibility of soliciting articles on each of the Court's 104 Justices from various scholars under the direction of a professional editor. This was one of six projects endorsed by the Program Committee.

Special Gifts Committee

The Special Gifts Committee, chaired by Vincent C. Burke, Jr. is devoting its efforts to building an endowment. Its goal is \$2,500,000 over a five-year period and, if it is achieved, this endowment will enable the Society to carry out the new projects proposed by the Program Committee and others which are contemplated. It will serve to ensure the Society's future.

Having closed with a report on the activities of the Special Gifts Committee, I should tell you that the latest major contributors to the endowment are Trustee Dwight Opperman who gave \$25,000 and West Publishing Company which also gave \$25,000. The Society has also received a pledge from the Clark-Winchole Foundation for \$25,000.

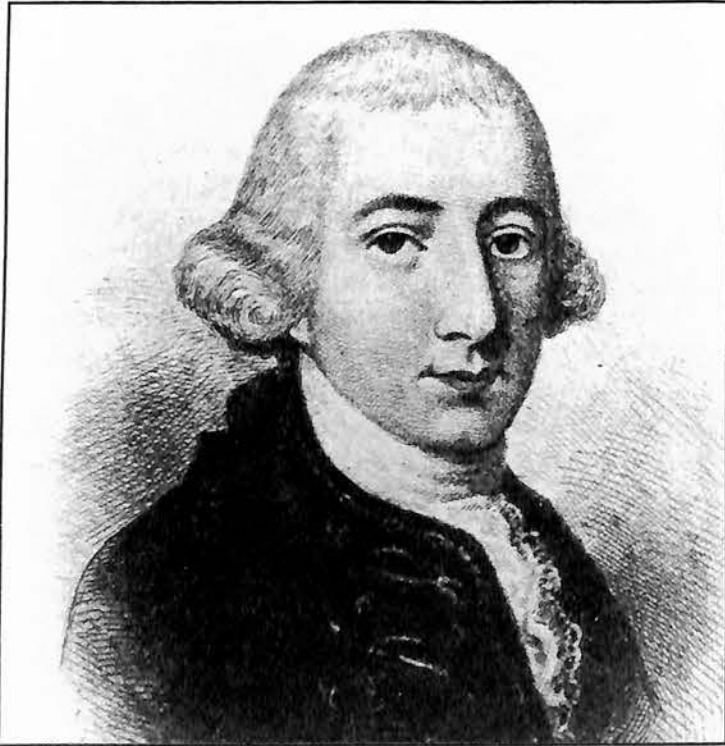
The American Solution: Court Hosts Exhibit on the Constitution

Editor's Note: This is the second in a three-part series of articles about a collection of manuscripts, prints, maps and documents that is currently on display at the Supreme Court.

The report of the Annapolis Convention reached the Confederate Congress on September 20, 1786, but it was ignored for the next five months. During that time seven states authorized the appointment of delegates to attend a meeting in Philadelphia, and Congress, beset by the deterioration of the nation's economy and civil disturbances in Massachusetts and New Hampshire, was forced to act. On February 21, 1787, Congress approved a resolution stating that "in the opinion of Congress it is expedient that on the second Monday in May next a Convention of Delegates who shall have been appointed by the several states, be held in Philadelphia for the sole and express purpose of revising the Articles of Confederation and Perpetual Union."

In all, sixty-five delegates were appointed to the convention, but only fifty-five actually attended the debates. Many of the delegates, for one reason or another, were unable to attend regularly, and a few left early. Most of the design and framing of the Constitution was accomplished by about twenty members.

James Madison was, from the outset, the intellectual leader of the Convention. He arrived well prepared and took the lead in the management of every important issue and appeared to be the best informed man on any point of debate. James Wilson, a Pennsylvania lawyer, also had made government his particular study. Like Madison, Wilson proved a staunch champion of representative government. And Gouverneur Morris, while not trusted by all his colleagues, displayed genius in both the debate and drafting of the document. Others, like Robert Yates and John Lansing, Jr., were detractors, and left when they found themselves to be in the minority camp. Most, however, were determined to succeed.



Most delegates expected a relaxed meeting, and many, including Major Pierce Butler, were accompanied by their families. Butler traveled by sea from Charleston to Philadelphia, but the nine-day sail had made him terribly seasick and unable to participate in early events of the Convention.

The decision to meet in Philadelphia was not popular with all delegates to the Constitutional Convention. Prices were high and taverns often crowded. There were serious economic problems; the shipbuilding industry and related crafts had declined sharply in the wake of British Trade restrictions, causing serious unemployment in the area. Crime was heavy, and there were frequent fires and epidemics. The city's main attraction as a meeting place was its geographic location, roughly in the center of the country, north to south. It was especially popular with those from South Carolina and Georgia, as they preferred sea voyages around perilous Cape Hatteras to trips across the wilderness and rivers of the land.

Expectations for the convention were low. In a letter written to his father in April 1787, James Madison explained that, "the probable diversity of opinions and prejudices, and of support or real interest among the states renders the issue [the upcoming convention] totally uncertain."

Madison and the rest of the Virginia delegation arrived early in Philadelphia. The Virginians traveled to the State House every day to meet newly-arrived delegates and to make their acquaintance. While waiting for the arrival of their fellow delegates, the Virginia delegation met two to three hours each day, wrote George Mason, "in order to form a proper correspondence of sentiments," necessary for establishing a plan of government that would be mutually acceptable.

The Virginians anticipated unanimity among the large states and objections from the small. From a letter written to his son, it is evident that Mason considered the "greatest problem facing the convention that of preserving enough power for the States to justify the continued existence of the State governments." He was to be proven correct.

When enough delegates had arrived in Philadelphia to attain a quorum of seven states, the assembly was convened. After electing George Washington to preside, the rules were established; the most important of these rules concerned secrecy. George Mason wrote to his son that "All communications of the proceedings are forbidden during the sitting of the Convention; I think this is a necessary precaution, to prevent misrepresentations or mistakes; there being a material difference between the appearance of a subject in its first indigested state, and after it shall have been properly matured and arranged." So completely did the delegates abide by the rule of secrecy adopted by the Convention that newspapers like the Pennsylvania Mercury and Universal Advertiser, which are included in the exhibit, were left with little to report, other than the names of those delegates in attendance.

Once called into session, the delegates frequently resorted to operating as a Committee of the Whole, a parliamentary procedure which allowed a more informal discussion of controversial issues. The first of these issues was the Virginia Plan. Presented by Edmund Randolph, the proposal outlined an entirely new system of government, despite the initial resolution of the Confederate Congress that the Articles of Confederation were only to be "corrected and enlarged." Charles Pinckney of South Carolina submitted his own plan for the Federal Constitution on the same day as the Virginia Plan, and although it, too, was referred to the Committee of the Whole for consideration, it was lost. Most of the delegates' time was spent on the Virginia Plan.

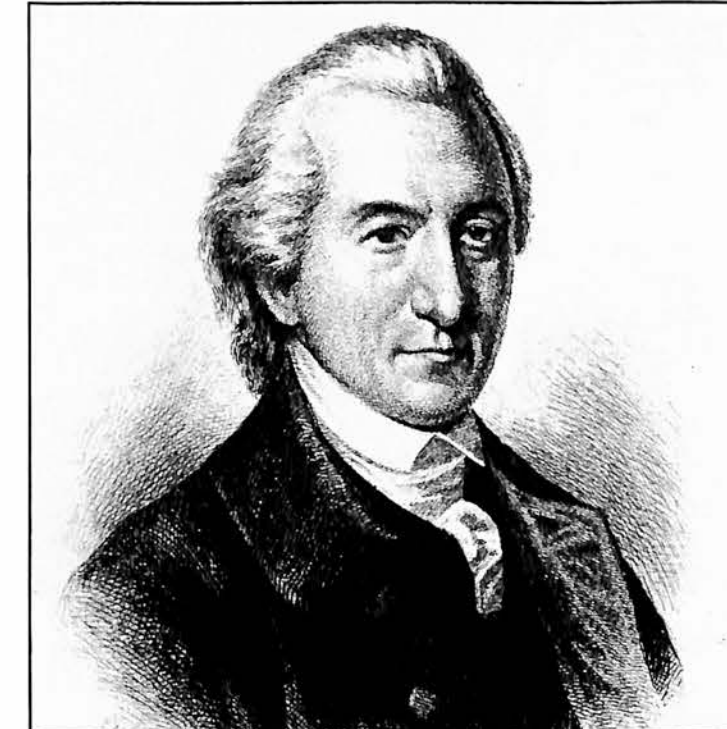
The Virginia Plan, as presented by Randolph, outlined a central government with three branches; the first of these was the executive branch, with a one-person executive. George Mason delivered a speech outlining his idea of resting the executive authority in three persons rather than one. His reason was not given in the copy of the speech on exhibit, but it is suspected that Mason was thinking of sectional representation in the Executive branch, with members to come from the northern, eastern, and southern parts of the nation.

There was much discussion on the nature of the executive. John Dickinson spoke for the need to make the three branches of government as independent as possible, yet he found the kind of executive proposed by Randolph to be incompatible with his idea of how the republic should operate. James Madison noted that "He [Mr. Dickinson] went into a discourse of some length, the sum of which was, that the Legislative, Executive, and Judiciary departments ought to be made as independent as possible, but that such an Executive as some seemed to have in contemplation was not consistent with a Republic, that a firm Executive would only exist in a limited monarchy."

Alexander Hamilton, in his speech of May 18, advocated a form of near-monarchy for the government. This speech is probably the most famous of his political career but it is renowned more for its presentation of Hamilton's political philosophy than for its effect upon members of the Convention. As James Madison noted in his journal, when Hamilton resumed his seat, "the Committee rose, and the House adjourned." The delegates had no interest in forming a monarchical executive.

The delegates spent the first two weeks of June meeting as a Committee of the Whole to consider other resolutions set forth in the Virginia Plan. Nathaniel Gorham served as chairman during these weeks because Washington wished to be seated with the Virginia delegation.

It was at this time that the delegates turned to the most



John Dickinson, author of *Letters from a Farmer in Pennsylvania to the Inhabitants of the British Colonies*, was one of the most respected men in pre-revolutionary America. His reputation was irreparably damaged when he opposed independence in the 1776 Continental Congress. As a delegate to the Constitutional Convention for Delaware, his comments were usually poorly received.

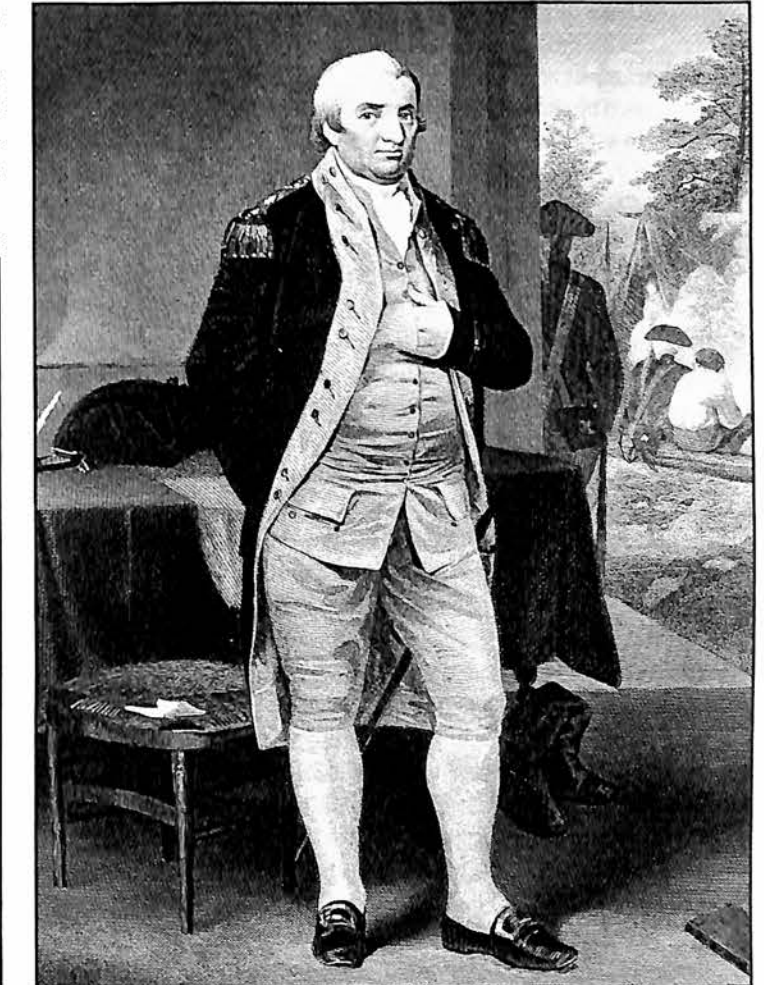
difficult problem they were to encounter: the issue of representation in the national legislature. As outlined in the Virginia Plan, the second branch of government would be composed of a national legislature.

During the debate concerning the method by which members of the first house of the national legislature would be chosen, the delegates listened to a long argument by James Madison on minority rights. Madison argued that in every instance where a majority of the people became united by a common interest or passion, the rights of the minority were in danger. Madison continued, "Respect for the character is always diminished in proportion to the number among whom the blame or praise is to be divided. Where a majority are united by a common sentiment and have an opportunity, the rights of the minor party become insecure." The only remedy he saw was to "enlarge the sphere" by dividing the community into so many interests and parties that no one group could obtain a majority with a common interest separate from the whole.

The subject of a popularly elected national legislature was referred to a special committee that would work out the details of the proposal. Like many other delegates, John Dickinson at first agreed with the proposed system, but later demurred, fearing that the individual states would be without representation in the system.

After the Committee submitted its report on the Vir-

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Charles Cotesworth Pinckney maintained a list of figures recording the populations of the several states in 1787, including three-fifths of the slaves in those states. Some columns were marked by asterisks to show that they came from actual counts. Recent estimates show that these figures were exceedingly inaccurate.

Constitution Exhibit (continued from page five)

ginia Plan, the Convention adjourned to allow time for the delegates to review and amend the design. When the Delegates reassembled on June 14, "William Paterson observed to the Committee that it was the wish of several delegations, particularly that of New Jersey, that further time might be allowed them to contemplate the plan reported to the Committee of the Whole, and to digest one purely Federal and distinguished from the reported plan." He hoped to have such a plan ready and asked that the Convention put off any further consideration of the original report. The accord that had existed so far was about to end.

The New Jersey, or small state plan was presented by Paterson and returned the focus of discussion to the principle of State sovereignty. Charles Cotesworth Pinckney's manuscript of the plan read that it be "Resolved, that the representation of the Supreme Legislature ought to be by States, otherwise, some of the States in the Union will possess a greater share of Sovereignty, Freedom, and Independence than others."

The four small states (New Jersey, Connecticut, New York and Delaware, as well as Maryland, as represented by Luther Martin) wanted only to improve the Articles of Confederation through revision, correction, and amendment. Delegates from these states were willing to give Congress authority to tax imports and regulate trade, recognize Acts of Congress as the Supreme Law of the land, and make treaties binding upon all of the States. They also agreed to accept a national judiciary that would serve as the final arbiter for state appeals. Beyond these particulars, there were no concessions.

In defense of his plan, Paterson argued that the Convention did not have authority to go beyond amending the Articles of Confederation. Additionally, if small states were to support the Virginia plan, then they might be forced to surrender their independence. The Delegates referred the New Jersey Plan to the Committee of the Whole so that the two alternatives could be compared.

On June 27, the delegates reconvened to consider the sixth resolution of the Virginia plan. They were scheduled to discuss the powers of the national legislature. Instead, John Rutledge moved that the delegates shift their attention to the seventh and eighth resolutions, which involved rules of suffrage in both houses of the legislature. This maneuver caught the small state faction unaware and spurred Luther Martin to speak. In a ferocious speech that continued into the next day, Martin defended vehemently the equal vote of the states under the Articles of Confederation and accused the large states of possessing "feelings of ambition and lust for power."

As recorded in Madison's journal, Martin argued that "if too little power was given to it [the central government], more might be added, but that if too much be given, it could never be resumed. Individuals as such have little to do but with their own states. The Central Government has no more to apprehend from States' company than the Union while it pursues proper measures. A government over individuals has to apprehend from its subjects, and that to report to the citizens at large would be throwing them back into a State of Nature. Government is not to regulate the rights of the individual, but that of the States." Martin concluded that "although states could, they should not give up their sovereignty, as then all would not be equal and free

as in the State of Nature."

Martin's speech served to divide the delegates into two divergent groups. Over the next days the delegates tried to work their way through the resolutions, but there was no progress. The impasse degenerated into threats and counter-threats. James Wilson, who favored proportional representation, raised what was a disparaging rhetorical question for the small state faction. "Can we forget for whom we are forming a government? Is it for men or for the imaginary beings called States?"

Future Chief Justice Oliver Ellsworth admonished the delegates that "we are razing the foundations of the building, when we need only repair the roof."

Madison turned the debate when he asserted that it was not large states versus small, but North versus South, and that the real issue was slavery. He proposed to solve the problem by counting slaves when proportioning representation in one house but not in the other. That way, he argued, each side, slave owners and non-slave owners, would have the majority in one house.

Gunning Bedford of Delaware increased the rancor and mortified the assembly when he suggested that the small states align with a foreign nation if and when the Confederation were dissolved.

In the middle of the furor, Benjamin Franklin placed specific terms for a compromise before the Convention. After reviewing the progress of the Convention, he characterized the efforts of the delegates as "groping as it were in the dark to find political truth, and scarce able to distinguish it when presented to us." Franklin moved "that henceforth prayers imploring the assistance of Heaven and its blessings on our deliberations," be held each morning before business. No vote was taken, because delegates didn't want to signal alarm outside of the assembly with so obvious a change of routine.

General Pinckney, although favoring Franklin's proposal, moved that a committee be appointed to reach a compromise on representation. The committee that was formed included one member from each state, and deliberately excluded stubborn advocates on each side. The report of the committee, which came to be known as the Connecticut Compromise, was delivered by Elbridge Gerry, the chairman, on July fifth, 1787. As presented, it called for the first branch to consist of one representative for every forty thousand inhabitants, counting three-fifths of the slaves. Money bills were to originate in the first branch and could not be amended in the second. In the second branch, each state received one equal vote. With few exceptions, this was exactly the proposal that had been submitted by Roger Sherman in early June.

William Paterson of New Jersey took notes of the debates that followed the Compromise presentation. He noted his fear that, under the proposed scheme of government, "an agreement [made in the legislature] cannot be accepted unless the representation is fair. Therefore: The Upper Branch may put a veto upon the acts of the Lower Branch. Or it may extort a concurrence."

Abraham Baldwin of Georgia was not alone in his belief that the second branch of the national legislature ought to represent property, either by the real wealth of its members or of its constituents. George Mason and Gouverneur Morris shared this opinion. Clearly, the delegates were still divided when considering the compromise.

On July 23, the Convention commenced discussion of

the ratification procedure. At issue was whether to submit the Constitution to the existing States' legislatures or to conventions specifically created by each state to consider ratification. George Mason favored using conventions, as he was particularly bothered by the fact that some state legislatures had, on occasion, reversed the acts of their predecessors. The Convention approved a plan that it would "refer the Constitution, after the approbation of Congress, to assemblies chosen by the people."

Debate then shifted to the basis for representation in the Second Branch of the legislature. Gouverneur Morris and Rufus King, both delegates being from large states, moved that the members of the Senate vote per capita, with three votes per state. Three was too large a figure, and after being reduced to two, the delegates approved the motion. Luther Martin was quick to declare that this was a further departure from the idea of states, rather than persons, being represented in the second branch.

After further debate on the remaining unsettled matters, the basic work of the Convention was complete. The delegates then created a Committee of Detail; John Rutledge served as chairman of the Committee, which also included Edmund Randolph, Nathaniel Gorham, Oliver Ellsworth, and James Wilson. Their task was to arrange the modified resolutions of the Virginia Plan, using notes from the debates as reference, into an organized work that would become the Constitution.

The Committee of Detail reported to the full Conven-



Gouverneur Morris has been called the most brilliant man of the Convention. He was certainly the most vocal, giving 173 speeches to Madison's 161. Nicknamed the "Tall Boy" in the Continental Congress, he was known as "an eternal speaker and for brass unequalled." Although he desired a strong central government, he had little faith in the common man's capacity to govern. Some New Englanders were suspicious of him, saying he was "a man of pleasure."

tion on August sixth. Each delegate received a printed draft, one of which is included in the exhibit. The seven-page document had broad margins that provided space for notes as the delegates reviewed the papers. After the new Constitution was read, the Maryland delegation met to decide whether they would act in unison. Luther Martin wished to continue fighting for a one-house national legislature, but was unable to reach an accord. Martin and John Mercer withdrew from the Convention and returned to Maryland to prepare for that state's convention.

The remaining delegates resumed their review of the proposed Constitution, going over the draft by Article, Section and Clause. After two days of review, Rufus King raised an objection to the wording in the fourth Article, because it would impact upon the three-fifths rule for slaves. King objected to slavery and emphasized the institution's divisiveness. Fearing another deadlock, Ellsworth and others attempted to redirect the debate, but Gouverneur Morris instead moved that the wording be altered to "free inhabitants", which would eliminate the inclusion of slaves when determining representation. To underscore his point, Morris declared that he would never uphold the "nefarious institution" of domestic slavery. James Wilson argued that the issue would be addressed when reviewing a different section of the draft, and the motion was defeated handsily.

The debate returned to the issue of slavery on August 21. Once again, the delegates avoided the broader problem by focusing debate upon the specific issue of the importation of slaves. Luther Martin argued that the slave trade was "inconsistent with the principles of the Revolution, and dishonourable to the American character, to have such a feature in the American Constitution."

Heated debate continued into the next day when General Pinckney of South Carolina spoke. He expressed his belief that even if he and all his colleagues were to sign the Constitution and use their personal influence on its behalf, "it would be of no avail towards attaining the assent of their constituents. South Carolina and Georgia can not do without slaves." Finally, a compromise mandating an end to the slave trade by 1800 was recommended by the Committee and was agreed upon by the delegates.

By September eighth, all that remained was the appointment of a Committee of Style and Arrangement that would "revise the style of, and arrange, the articles which have been agreed to by the House." The Committee consisted of James Madison, Gouverneur Morris, Alexander Hamilton, Rufus King, and Dr. William Samuel Johnson. Dr. Johnson presented the report of the Committee of Style on September twelfth; the Convention then ordered copies of the document to be printed and distributed to delegates.

One such copy is displayed in this exhibit; it belonged to George Washington. The document shows interlinear notes, sections of text that were stricken, and some changes in word choice that were noted by Washington in his own handwriting.

In the final discussion, George Mason proposed alterations to the document, and amendments that would serve as a bill of rights. Joined by Elbridge Gerry and Edmund Randolph, the men moved that their proposal be adopted, but their efforts were defeated. In all, the delegates made few alterations to the final version as presented by the Committee of Style.

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Bicentennial Abroad (continued from page one)

Constitution in nations which are currently reexamining their own governing principles.

The USIA reports that lectures and symposia on the Constitution and related subjects have been given in more than 129 countries during the past two years. For example, Voice of America has broadcast many programs on Constitutional subjects, including the 26-part series "We the People". Constitutional experts have appeared on programs for WORLDNET, a television service which is seen worldwide. Retired Chief Justice Burger has appeared on several programs for WORLDNET and has been involved with many international activities, as has Betty Southard Murphy, a well-known Washington attorney who heads the Commission's International Advisory Committee.

Many experts in Constitutional Law have shared their expertise in these programs. One of these authorities is Professor A. E. Dick Howard of the University of Virginia. Professor Howard's viewpoint is especially interesting as he was the chief architect of the modern Virginia constitution. Howard has lectured in person in Austria, Belgium, Spain, Brazil, Hong Kong, Sweden, the Philippines, England and the Federal Republic of Germany. Professor Howard's participation in the Philippines was particularly appropriate as the Filipinos were in the process of creating a new Constitution.

One of the concepts Professor Howard has espoused is that throughout history, constitutions have incorporated ideas taken from constitutions drafted in other countries. Howard cited the example of the influence of the U.S. Constitution on the Spanish Constitution of 1812, explaining that a Venezuelan had translated the U.S. Constitution into Spanish while he was living in Philadelphia. His translation finally made its way to Cadiz by way of Venezuela and thus influenced the Spanish Constitution.

Howard said one aspect of the United States Constitution which is particularly pertinent to modern nations is the concept of the separation of powers. Howard detailed its relevance by explaining that many nations are currently dealing with the problem of creating a strong executive, but not a dictator.

In clarifying this idea Professor Howard said: "Could there be a more central question in any modern state which aspires, on the one hand, to stability and durability and, on the other, to some kind of democratic, open, free society. [H]ow does a nation make the executive strong enough to deal with agonizing problems of poverty and economic growth and at the same time not deliver itself into the hands of a tyrant?"

Howard also noted that, "If there is one unique dimension to American constitutionalism, it is judicial review." He explained the statement by saying that almost all constitutions contain a bill of rights, but that the United States' Bill of Rights is effective because it prohibits the government from taking certain actions against individuals. Because of this focus, it becomes more enforceable. Howard also noted that many countries have very detailed bills of rights in their constitutions, but because their judicial branches are not sufficiently independent, they are not able to enforce them effectively.

Representing another aspect of constitutional and legal expertise, Judge J. Clifford Wallace of the United States Court of Appeals for the Ninth Circuit has participated in many programs through the sponsorship of The Asia Foundation and the USIA since 1983. Judge Wallace pointed out that "many

countries are developing legal concepts in which American law can be of assistance. For example, patent, copyright, and trademark law have become important in Indonesia, the Peoples Republic of China, Thailand, the Republic of China, and Korea. Under the new Korean Constitution, a type of due process right has been guaranteed." He further commented that "Asian countries are interested in our judicial administration problem-solving ability. It is a critical time for Asia to strengthen legal systems as the countries move from strong executives to more democratic systems. Important progress is being made in the judicial systems of Asian countries."

In discussing his actual participation in these programs, Judge Wallace said "There are dozens of law programs operating in each country. I attempt to find the next step that a country should consider taking. For example, four years ago the next step in Pakistan was to encourage visits of Pakistani judges to the United States. This year it was the establishment of a new Judicial Training Academy and development of a plan for overcoming backlog in the courts. On my last trip to the Peoples Republic of China, it was the development of 'economic' law and 'economic courts' so that foreign investments could be attracted. In Malaysia, it was the establishment of a small claims court." Summarizing his work, Judge Wallace reported that "Asia-wide programs have been especially fruitful. . . . The interaction among judges is accelerating. We are building bridges between the United States and Asian judges that will have long-term importance. . . . We are accepted because our only interest is in improving the administration of justice."

Many other members of the American legal community have participated in educational programs abroad, sharing their time and expertise with other nations. Despite the demands on their time, many members of the Supreme Court of the United States have lectured and worked abroad during the last two years under the auspices of a variety of organizations. Justice William J. Brennan lectured in the Federal Republic of Germany and Justice Antonin Scalia in Australia, Italy, and Argentina. Justice Sandra Day O'Connor lectured in Madagascar under the sponsorship of the State Department and at the Paris-American Anglo Legal Exchange. Justice Anthony Kennedy taught in Salzburg, Austria under a program sponsored by McGeorge University. Justice Kennedy taught a class in constitutional law at McGeorge University for many years before joining the Supreme Court. Chief Justice William H. Rehnquist attended meetings and lectured in Australia this past summer. The focus of all of these programs has been the free exchange of ideas and expertise in the interest of improving the judicial procedures and systems of all nations.

Plans call for continued international programs in celebration of the U.S. Constitution during the next three years. The programs will commemorate several important events of 1789, including Washington's presidency, the first federal elections, the first meeting of Congress and the formation of an independent judiciary. The programs will also commemorate the ratification of the Bill of Rights in 1791. Professor Howard summarized the importance of such efforts by saying, "The constitutional apparatus is a mirror of social life, politics, history, the whole milieu of a country." As such, it is particularly appropriate that nations throughout the world will have further opportunities to focus their attention on the bicentennial celebration of the United States Constitution.

PREAMBLE

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

PREAMBULE

Nous, Peuple des Etats-Unis, en vue de former une Union plus parfaite, d'établir la Justice, de faire régner la Paix intérieure, de pourvoir à la Défense commune, de développer le Bien-être général et d'assurer les bienfaits de la Liberté à nous-mêmes et à notre postérité, nous décrétons et établissons cette Constitution pour les Etats-Unis d'Amérique.

BAŞLANGIÇ

Biz Halkı Birleşik Devletler daha mükemmel bir Birlik yaratmak, adaleti sağlamak, ülke içinde huzuru güvence altına almak, ortak savunmayı gerçekleştirmek, genel refahı artırmak ve özgürlüğün nimetlerini kendimize ve gelecek kuşaklara sağlamak için bu Amerika Birleşik Devletleri Anayasası'nı takdir ve tesis ediyoruz.

نحن نشتب

الولايات المتحدة ،

المقدمة

رغبة منا في انشاء اتحاد اكثر كمالا ، وفي اقامة العدالة ، وضمان الاستقرار الداخلي ، وتوفير سبل الدفاع المشترك ، وتعزيز الخير العام وتأمين نعم الحرية لنا ولأجيالنا القادمة ، نرسم ونضع هذا الدستور للولايات المتحدة الاميركية .

One of the Primary projects of the United States Information Agency (USIA) Bicentennial Office has been the publication and distribution of the text of the Constitution. This has been published in an illustrated and annotated sixty-page pamphlet, printed to commemorate the Bicentennial of the Constitution, which spans the period from the drafting of the Constitution in 1787 and ratification in 1788, to the adoption of the Bill of Rights in 1791. This publication has been printed in eleven languages, including Spanish, Nepalese, Korean, Japanese, Dutch, Indonesian, and Finnish. The Preamble to the Constitution is printed above in English, French, Turkish, and Arabic. Through the efforts of the USIA and other organizations, including commercial publishers, the Constitution has been translated into more than twenty languages, including Russian and Chinese, thus making it available to virtually millions of persons around the world.

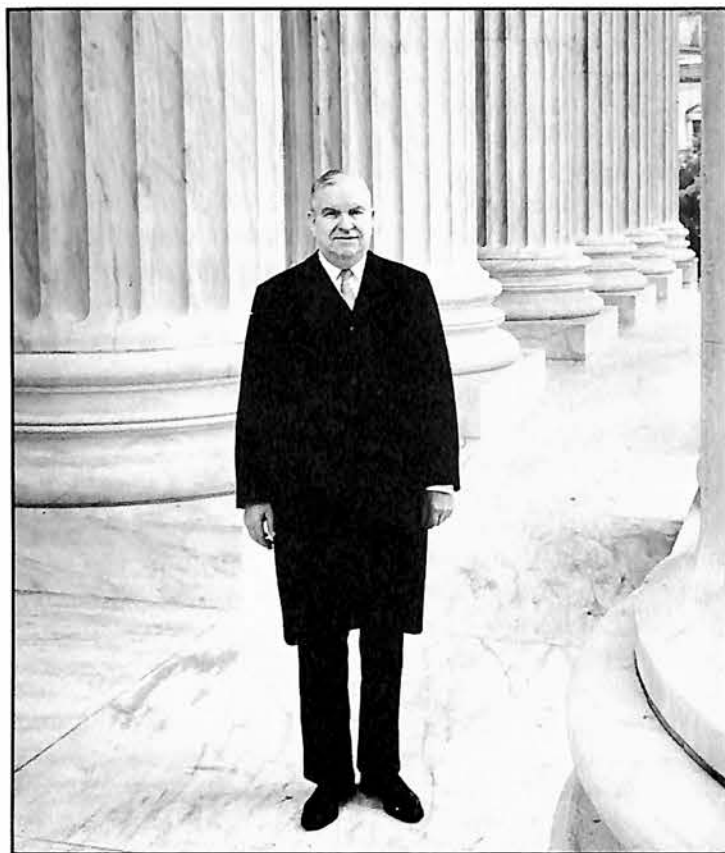
Dean Erwin N. Griswold Honored in Harvard Law School Retrospective

Harvard Law School recently hosted an exhibition honoring the career of Erwin Nathaniel Griswold entitled *Erwin N. Griswold: Illustrious Alumnist*. Griswold's career has encompassed many aspects of the law and legal education including his tenure as a member of the faculty of the Harvard Law School, twenty-one years of which he served as Dean. In addition, he has worked as a private practitioner of the law, an attorney in the Office of the Solicitor General of the United States, and as Solicitor General of the United States. During his career, Griswold has argued 127 cases before the Supreme Court of the United States and he currently holds the record for the most cases argued before the Court by any living member of the Supreme Court Bar. This impressive record is particularly noteworthy as it has only been surpassed by several nineteenth century practitioners in a time when there were few members of the Supreme Court Bar and when travel conditions and limitations frequently necessitated choosing an attorney in close physical proximity to Washington. In addition to his immediate professional accomplishments, Griswold served as president of the American Bar Foundation, president of the Association of American Law Schools, as well as trustee for such organizations as Oberlin College, Bradford Junior College and the Supreme Court Historical Society.

The exhibit is divided into fourteen categories and features more than 260 documents and photographs, covering Griswold's public and personal achievements and interests. The first few sections cover Griswold's life at Harvard, both as a student and a member of the faculty, while two sections concern themselves with his tenure as Dean of the Law School. One section is devoted to his public service, another to his writings about and interest in the Bill of Rights, while still another concerns his work as an internationalist. Other sections cover his writings and speeches in general, honors and awards, hobbies and friendships. Of course no exhibit about Dean Griswold would be complete without touching upon the life and accomplishments of his wife, Harriet Ford Griswold; although section XII is dedicated exclusively to her, many of the other sections contain references to her and her activities. For example, item number 232 in the exhibit is the Supreme Court Historical Society *Quarterly* Vol. XIII No. 4 in which Mrs. Griswold's article "Justices of the Supreme Court of the United States I have Known" appears. Mrs. Griswold's many contributions to Harvard, the community and Dean Griswold's career are reflected in this section.

In creating the exhibit, Curator of Manuscripts Emerita, Erika Chadbourn, had many and varied sources to draw upon. The catalog of the exhibit carries, among other things, an explanatory note about these sources and remarks that the Erwin N. Griswold papers in the Manuscript Division of the Harvard Law School Library occupy "50 linear feet of shelf space and number approximately 30,000 items, in 100 manuscript boxes." This sizeable collection is only one of several collections of Griswold's papers and gives some indication of the wide range of his activities and interests and of his great productivity.

Several of the documents in the exhibit pertain to an article Griswold wrote early in his career while serving as a member of the Harvard Law School Faculty. The article was



Erwin Nathaniel Griswold

entitled "Government in Ignorance of the Law--a Plea for Better Publication of Executive Legislation," and in the words of Paul Freund, it followed "hard upon a Supreme Court case that exposed the lack of official publication of executive orders and regulations." This paper caught the attention of U.S. Congressman Emanuel Celler, among others, who wrote to Griswold in December of 1934 saying: "I was particularly interested in the appendix thereto. If you have no objection, it is my purpose to introduce the bill (Statutory Rules and Regulations Publication Act, 1935) that you suggest." Accompanying this letter in the exhibit is a copy of the proposed bill, H.R. 6323, dated 1 March 1935, "To provide for the custody of Federal proclamations, orders, regulations, notices, and other documents, and for the prompt and uniform printing and distribution thereof." The copy in the exhibit bears Griswold's handwritten notes regarding the fate of his recommendation. In a letter dated 22 July 1935, Celler wrote Griswold telling him that the "Federal Register Bill" had been passed. In that letter Celler said, "Most of the credit in this matter is due to your good self."

Another area of interest in the exhibit is the portion that deals with Senate Bill 1392 of 1937, which called for an increase in the number of U.S. Supreme Court Justices. In March of 1937, Senator Frederick Van Nuys telegraphed Griswold requesting him to appear before the Senate Judiciary Committee to testify regarding the pending bill. The exhibit contains copies of Griswold's statement before the Committee in which he commented that "Even if the Court has on occasion strayed from the truly judicial path and acted like a 'super-legislature' it does not follow that it is good government for the President to be

made a super-Court." A clipping from the Chicago Tribune, dated 31 March 1937 bears the headline: "Law Professor [Griswold] Tells Peril in Altering Court, Warns Against Preparing Dictatorship." The last item in this section is a copy of a letter from Erwin Griswold to Senator Burton K. Wheeler, dated June 26, 1937, in which he congratulated the Senator for his action in opposing and striking down Senate Bill 1392. In his letter Griswold commented, "the democratic process has triumphed at a time when it seems to have been in very real danger."

A recurrent theme in Griswold's publications and speeches has been his support for the freedoms guaranteed by the Bill of Rights and, particularly, the Fifth Amendment. The exhibit has one section devoted to this topic, and contains copies of lectures delivered by Griswold on this topic, as well as other pertinent material. A newspaper clipping in the article shows that Griswold was one of twenty-three prominent Americans who urged senators to "support the Flanders Resolution to censure Senator McCarthy". One of the interesting items in this section is a copy of another newspaper clipping from January of 1955 in which Griswold's speech before the Maine Bar Association is quoted. During the speech Griswold criticized both Senator Eugene McCarthy and the Senate. The newspaper story quotes Griswold as saying: "The real failure of the Senate was in not censuring McCarthy for abusing individual citizens." On September 7, 1955 U.S. Congressman Stewart Udall wrote Griswold praising him for defending the Fifth Amendment "at a time when public opinion was running counter to your thinking. I have a strong feeling that you have made a significant contribution toward changing the unfavorable climate of opinion which has stifled our thinking on freedom in recent years." Professor Paul Freund observed during a reception honoring the Griswold Exhibit that Griswold was Dean of the Law School during McCarthy's tenure in the Senate. Freund commented that "the time of Senator McCarthy made uneasy the role of academics," but that Griswold persisted in "his defense of academic freedom in the face of threats," and was later given a "vote of appreciation from the University faculty as a whole."

Griswold's feelings about the rights guaranteed in the Fifth amendment were spelled out in a paper written in 1955 entitled "The 5th Amendment Today: Three Speeches". The exhibit contains a draft of this paper which reads: "The Fifth

Amendment can serve as a reminder of the high standards set by the founding Fathers, based on their experience with tyranny. It is an everpresent reminder of our belief in the importance of the individual, a symbol of our highest aspirations."

Dean Griswold's interests also encompassed international law and legal education and the exhibit contains materials concerning his travels to Nigeria and Liberia where he was concerned with problems of legal education, specifically, and the developing educational systems of the African nations in general. His interests in legal education have focused particularly on Great Britain and other member nations of the Commonwealth, and he has lectured and travelled frequently in Great Britain, Canada and Australia. While he was at Harvard, he brought lecturers from Commonwealth countries to lecture at the law school. Griswold has also been actively involved in the Lawyers Alliance for Nuclear Arms Control.

Paul Freund observed in his article in the exhibit catalog that "the efficiency of the man has been an unending object of admiration for those who have observed him at close range." Freund went on to cite one example where Griswold wrote to an Australian correspondent: "Your good letter arrived this morning. Since I had a class until noon, I have had to wait until this afternoon to answer it." Certainly the accomplishments reflected in this exhibit would bear that observation out. Freund also mentioned that it was during Griswold's administration as dean that women were first admitted to the law school. Griswold himself, speaking at the opening reception honoring the exhibit, displayed modesty and a sense of humor when he said he thought one of his greatest accomplishments at the law school was the replacement of a receptionist in the school who "was a genius at insulting people who asked for information."

The exhibit pays tribute to an individual who has dedicated his life to the law and to those ideals and goals he feels to be of importance. Perhaps Paul Freund summarized Griswold's standing in the legal community best when he said: "One need only recall that when, in October 1985, the Supreme Court celebrated the fiftieth anniversary of its palatial home, it was Erwin Griswold who spoke at the ceremony for the Bar of the Supreme Court." *Catalogs of the exhibit are available by contacting David Warrington, Special Collections of the Harvard Law School Library.*

Membership Update

The following members have joined the Supreme Court Historical Society between September 16 and December 31, 1988.

California Gary Shinaver, Fresno Eric B. Rasmussen, Irvine William R. Emmons, Long Beach Leon H. Brush, Los Angeles	Kentucky Donna J. Catlett, Louisville	North Carolina Peter G. Fish, Durham
District of Columbia Mr. and Mrs. Nicholas S. McConnell	Maryland W. Shepherdson Abell, Chevy Chase	Oregon Donald M. Haskell, Astoria
Florida Liza Riso, Bal Harbour James Caldwell, Sunrise	Missouri Bradford E. Ellsworth, Caboul	Pennsylvania Ben J. Szwalbenest, Bala Cynwyd
Illinois William W. Crawford, Glenview	New York Robert Kaczorowski, New York James B. Lewis Esq., New York John R. Spencer, New York	Virginia James M. Day, Arlington Frank Emmett Howard Jr., Fairfax Cynthia Dunn, Harrisonburg Joanne V. Meegan, Harrisonburg

Constitution Exhibit *(continued from page seven)*

Monday, September seventeenth marked the last session of the Constitutional Convention in Philadelphia. The engrossed Constitution was read, and Benjamin Franklin moved that the Constitution be signed by all delegates. Before any signatures were affixed, Nathaniel Gorham requested that the number of citizens per representative in the lower house be reduced from forty to thirty thousand. George Washington rose to present the question and, for the first time in the Convention, entered the debate by expressing his support for the motion. The motion passed unanimously.

While the last delegates signed their names to the Constitution, Benjamin Franklin observed that he had often puzzled over the picture of the sun that was painted on the back of the President's chair. He had been unable to determine if it were a setting or rising sun, "but now, at great length, I had the happiness to know, that it is a rising, and not a setting, sun."

The following day, the Pennsylvania Packet and Daily Advertiser announced that the Convention was adjourned, and reported that "Major W. Jackson, the Secretary of that honourable body, leaves this city for New-York, this morning, in order to lay the great result of their proceedings before the United States in Congress."

The third and final installment of this series recounts the events of the ratification sequence and subsequent celebrations throughout the new nation. Part three of this article will appear in the next issue of the Quarterly.



Benjamin Franklin was in such poor health from kidney stones and gout that he was carried to the Convention each day on a pallet hoisted by four prisoners from the crowded jail opposite the State House.

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